

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

742L0509

HOUSE BILL NO. 1248

Introduced by: Representatives McLaughlin, Brunner, Frost, Hanks, Hennies, Jerke, Koistinen, Rausch, and Tornow and Senators Adelstein, Bogue, Duenwald, Duniphan, Hundstad, McNenny, and Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding money lenders.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 54-4-40 be amended to read as follows:

4 54-4-40. Any person who engages in the business of lending money shall apply for a license
5 as prescribed by §§ 54-4-36 to 54-4-63, inclusive. The applicant shall apply for a license under
6 oath on forms supplied by the division. The application shall contain the name of the applicant's
7 business, proof of surety bond, address of the business, the names and addresses of the partners,
8 officers, directors, or trustees, and other information as required by the director by rule or order.

9 The applicant shall pay an original license fee as set by rules of the commission promulgated
10 pursuant to chapter 1-26 not to exceed one thousand dollars. If the application of an existing
11 licensee is for an additional location, the application need only include the location and identity
12 of the location manager, plus any changes from the existing license, or such other information
13 the director may consider necessary.

14 Section 2. That § 54-4-42 be amended to read as follows:

15 54-4-42. The applicant shall submit with the application for a license a bond in an amount



1 not to exceed the total of ~~five~~ ten thousand dollars for the first license and ~~one~~ two thousand five
2 hundred dollars for each additional license. The bond shall be satisfactory to the director and
3 issued by a surety company qualified to do business as a surety in this state. The bond shall be
4 in favor of this state for the use of this state and any person who has a cause of action under
5 §§ 54-4-36 to 54-4-63, inclusive, against the licensee. The bond shall be conditioned on:

- 6 (1) The licensee's faithful performance under §§ 54-4-36 to 54-4-63, inclusive, and any
7 rules adopted pursuant to §§ 54-4-36 to 54-4-63, inclusive; and
- 8 (2) The payment of any amounts that are due to the state or another person during the
9 calendar year for which the bond is given.

10 The aggregate liability of a surety to all persons damaged by a licensee's violation of §§ 54-
11 4-36 to 54-4-63, inclusive, may not exceed the amount of the bond.

12 Section 3. That § 54-4-43 be amended to read as follows:

13 54-4-43. The director shall investigate the facts ~~and, after~~ concerning the application. The
14 director may review, either deny or and consider the relevant business records and the capital
15 adequacy of the applicant and the competence, experience, integrity, and financial ability of any
16 person who is a member, partner, director, officer, or twenty-five percent or more shareholder
17 of the business. If the director finds that the financial responsibility, financial condition,
18 business experience, character, and general fitness of the applicant reasonably warrant the belief
19 that the business will be conducted lawfully and fairly, the director may grant a license based
20 on the findings.

21 Section 4. That § 54-4-45 be amended to read as follows:

22 54-4-45. ~~Any license shall be renewed~~ A license expires on July first. To renew a license,
23 the licensee shall file for renewal by June fifteenth. The renewal application shall include a
24 renewal fee not to exceed one thousand dollars, as set by rules of the commission promulgated

pursuant to chapter 1-26, proof of surety bond, and any other information as required by the director, by rule or order. Any licensee that files for renewal after June fifteenth and before July first shall pay a late fee in addition to the renewal fee. The late fee, not to exceed twenty-five percent of the renewal fee, shall be established by the commission in rules promulgated pursuant to chapter 1-26. After June thirtieth no license may be issued unless an application is filed pursuant to § 54-4-40.

Section 5. That § 54-4-48 be amended to read as follows:

54-4-48. The director may, ~~upon ten days notice to the licensee,~~ issue a cease and desist order from any practice that does not conform to the requirements set forth in §§ 54-4-36 to 54-4-63, inclusive, or ~~rules any commission rule adopted by commission, order, or condition imposed in writing, or any federal statute, rule, or regulation pertaining to consumer credit. A~~ cease and desist order may be issued to any licensee or to any person engaging in the business of lending money without a license.

Section 6. That § 54-4-49 be amended to read as follows:

54-4-49. The director may suspend or revoke a license for good cause pursuant to chapter 1-26. If the licensee is the holder of more than one license, the director may suspend or revoke any or all of the licenses. For purposes of this section, good cause includes any of the following:

- (1) Violation of any statute, rule, order, or written condition of the commission or any federal statute, rule, or regulation pertaining to consumer credit;
- (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
- (3) Performing an act of commission or omission or practice that is a breach of trust or a breach of fiduciary duty.

Section 7. That § 54-4-50 be amended to read as follows:

1 54-4-50. An action may also be brought by the attorney general or the division, or both, to
2 enjoin a licensee from engaging in or continuing a violation or from doing any act in furtherance
3 thereof. ~~In any action, an order or judgment may be entered awarding a temporary or permanent~~
4 ~~injunction.~~ The division shall afford an opportunity for hearing upon request if the request is
5 filed with the division within thirty days after the party requesting the hearing first receives
6 notice of the allegations. If the division determines that a practice which it has alleged is
7 unlawful should be enjoined during the pendency of any proceedings incident to that allegation,
8 the division may issue a temporary order at the commencement of the proceedings or at any time
9 thereafter that shall be fully binding on the party to whom the temporary order is directed until
10 the proceedings are concluded or the temporary order is modified or dissolved by the division.
11 Any party to whom a temporary order is directed may request a hearing concerning the order,
12 which shall be held at the earliest mutually convenient time, but in no event more than ten days,
13 after the party's request is received by the division or at any other time the parties mutually agree
14 upon. Every temporary order shall include findings and conclusions in support of it. No
15 temporary order may be issued unless the division finds from specific facts supported by a
16 sworn statement or the records of a party subject to the order that consumers are otherwise likely
17 to suffer immediate and irreparable injury, loss, or damage before proceedings, incident to a
18 final order, can be completed.

19 Any order issued by the division shall be in writing, shall be delivered to or served upon the
20 party affected, and shall specify its effective date, which may be immediate or at a later date.
21 The order shall remain in effect until withdrawn by the division or until terminated by a court
22 order. The order of the division, upon application made on or after the effective date of the order
23 by the division to the circuit court in the county in which an office or the residence of the party
24 is located, may be enforced ex parte and without notice by an order to comply entered by the

1 court. If the proceeding involves more than one party and each of the parties do not have an
2 office or residence in one county, the department may file its application in any county of this
3 state where one of the parties has an office or residence. If no party to the proceeding has an
4 office or residence in the state, the division's application shall be filed in the sixth circuit.

5 Section 8. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any party aggrieved by any order, temporary order, decision, ruling, or other act or failure
8 to act by the division under this chapter is entitled to judicial review pursuant to chapter 1-26.

9 Section 9. That § 54-4-57 be amended to read as follows:

10 54-4-57. The division shall annually conduct an examination of business records and
11 accounts of any licensee licensed under §§ 54-4-36 to 54-4-63, inclusive. The director may order
12 an examination if circumstances require a special examination. The director may charge back
13 to the licensee any cost associated with an on-site examination. The director may waive an
14 on-site examination and only require an annual self-examination. If a licensee conducts a
15 self-examination, the licensee shall provide any information requested under oath and on forms
16 provided by the division by order or rule.

17 For the purposes of this section, circumstances requiring a special examination exist if the
18 division has probable cause to believe that a party has engaged in an act that is subject to action
19 by the division. To the extent necessary for the special examination, the division may administer
20 oaths or affirmations under penalty of perjury, and, upon its own motion or upon request of any
21 party, may subpoena witnesses, compel their attendance, adduce evidence under penalty of
22 perjury, and require the production of any matter which is relevant to the investigation,
23 including the existence, description, nature, custody, condition, and location of any books,
24 documents, or other tangible things of any kind or nature and the identity and location of

1 persons having knowledge of relevant facts, or any other matter reasonably calculated to lead
2 to the discovery of admissible evidence.

3 Section 10. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 If the division requires the production of records that are located outside this state, the party
6 shall either make them available to the division at a convenient location within this state or pay
7 the reasonable and necessary expenses for the division to examine them at the place where they
8 are maintained. The division may designate representatives, including officials of the state in
9 which the records are located, to inspect them on its behalf.

10 Section 11. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Upon failure without lawful excuse to obey a subpoena or give testimony, and upon
13 reasonable notice to all affected persons, the division may apply to the circuit court for an order
14 compelling compliance.